

DATE: November 30, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 06-24030
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
ARTHUR E. MARSHALL, JR.**

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Applicant is a 61-year-old administrative aide for a federal contractor. Between 2000 and 2006, over \$26,000 of her debts became delinquent. She introduced no documentation and presented scant argument mitigating financial considerations security concerns. Clearance is denied.

STATEMENT OF THE CASE

On May 30, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed reasons why, pursuant to Guideline F (Financial Considerations), it could not make the preliminary affirmative finding under

the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In her response, notarized on June 14, 2007, Applicant admitted all seven allegations set forth in the SOR. This included six allegations regarding past due accounts totaling almost \$20,000 and one allegation regarding a garnishment imposed against her wages for a delinquent debt in the approximate amount of \$6,793.53. She also submitted a one-page explanation regarding the debt noted in the first SOR allegation, a delinquent account to an automobile company for approximately \$11,047. Additionally, Applicant requested an administrative determination based on the written record.

The Government's case was submitted on July 11, 2007, and a complete copy of the file of relevant material (FORM)¹ was provided to Applicant. She received a copy of the FORM on September 5, 2007, and was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. A one-page, hand written letter, dated October 3, 2007, was submitted by Applicant. It provided additional comment regarding some of her delinquent accounts. That submission was made part of the record without objection from the Government. I was assigned this case on November 28, 2007.

FINDINGS OF FACT

Applicant's admissions to all of the allegations set forth in the SOR are incorporated herein. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 61-year-old administrative aide for a federal contractor. She has worked for that contractor since 1986 and has held a security clearance since that time without incident. The mother of a 32-year-old daughter, Applicant was married from 1974 through 1981.

There are few facts of record depicting Applicant's life or finances and Applicant chose to limit her submissions and narrative to a minimum. At issue are seven obligations, amounting to over \$26,000 in delinquent debts. These debts went into collection at various dates between 2000 and 2006.

With regard to a collection account by an automobile manufacturer for approximately \$11,047, that account was put into collection in October 2006 and was still unsatisfied as of March 2007.² Applicant only notes: "I just feel I was railroaded into signing anything. I didn't even have any intention of buying anything. . . . My daughter was the one wanting to look, but she didn't have a job and she was on state [illegible]. So how is it they can make her a co-signer on this and no bank would give me a loan."³ She continues by noting: "It was poor judgment on my part with a signature,

¹ The Government submitted nine items in support of its case.

² See SOR allegation 1.a.

³ Answer to the SOR at 3.

but I already had a 254.00 dollar car note with [a bank] and some how they finagled a way to make this loan go through using [the creditor's] motor company.”⁴

In Applicant's response to the FORM, she made some additional comments regarding specific allegations. Regarding SOR allegation 1.g, the garnishment for approximately \$6,793.53, Applicant states she only has five more weeks of \$50 payments before the balance is satisfied. She also gives the name and phone number of a bank contact person. No other information or documentation was submitted.

Applicant also states that “in November I'll be working on the telephone bills with the money that has been paying the credit card amount.” Although SOR allegation 1.c, for about \$392, is clearly a telecommunications company, it is unclear as to what other account(s) Applicant is making reference with this statement.

Finally, Applicant states: “The personal Subject Interview. The rent figure of 815.00 a month is 875 a month. That maybe a typo.” This comment is made to apparently correct a statement made by her in the FORM. No other illustrative or mitigating information is provided by Applicant.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances; it must be based on its own merits, with consideration of the whole-person concept, and in light of the factors listed in the Directive. Specifically these factors are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the incident; (5) the extent to which the participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁵ The government has the burden of proving controverted facts.⁶ The burden of proof is something less than a

⁴ *Id.*

⁵ ISCR Case No. 96-0277 at 2 (App Bd. Jul. 11, 1997).

⁶ ISCR Case No. 97-0016 at 3 (App Bd Dec 31, 1997), Directive, Enclosure 3, ¶ E3.1.14.

preponderance of evidence.⁷ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations. *The Concern: Failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.*¹⁴

Conditions pertaining to this adjudicative guideline (AG) that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

CONCLUSIONS

⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁸ ISCR Case No. 94-1075 at 3-4 (App Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

⁹ ISCR Case No. 93-1390 at 7-8 (App Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ *Egan*, 484 U.S. at 531.

¹¹ *Id.*

¹² *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹³ Executive Order 10865 § 7.

¹⁴ AG ¶ 18.

Upon consideration of all the facts in evidence and Applicant's admissions to the seven SOR allegations, and after application of all legal precepts, factors, and conditions, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline F (Financial Considerations), the Government has established its case. Applicant admits, as alleged, that she has seven delinquent accounts. Those accounts comprise a past-due debt of over \$26,000. Therefore, Financial Considerations Disqualifying Condition (FC DC) 1, AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC 2, ¶ 19(c) (*a history of not meeting financial obligations*) apply. Given this showing, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation, to overcome the case against her.

With regard to the first obligation cited, it appears that Applicant wishes to argue that she did not think her signature as a co-signor, or that of her daughter, would effectuate the loan which would provide one or both of them with an automobile.¹⁵ While the argument is unclear, the fact is that a loan was entered into for an automobile and that the account was placed into collection in October 2006. Although her statement is somewhat vague, there is no indication as to what, if anything, has been done with the car or the account. No mention is made of a voluntary repossession, an attempt to work out an alternative repayment plan, or any other action which might tend to show that Applicant attempted to address this substantial and delinquent obligation.

Moreover, although Applicant states she is almost through repaying one credit card obligation¹⁶ through garnishment, she provides only the name and telephone number of a bank contact. While, at best, this unsubstantiated declaration might serve to suggest some progress toward one obligation has been made, she has failed to submit any documentation reflecting any genuine progress on this garnishment or showing her current balance owed. Consequently, she has failed to meet her burden with regard to this account and this allegation. Further, while it may be Applicant's intent to eventually satisfy her telephonic obligations with the sums now devoted to repaying this credit card garnishment, a promise to pay in the future provides no tangible evidence that actual progress has been made or will be made on a debt or debts.¹⁷

When Applicant chose to have this matter decided on the written record, she precluded the possibility of oral testimony and inquiry which might have elicited sufficient facts to raise one of the available Financial Considerations Mitigating Conditions (FC MC). Based on the scant facts of record, however, none of the FC MCs have been raised and Applicant has failed in her burden to overcome the case against her.

Given the few facts of record, a whole person analysis must be made on minimal facts. Applicant is a mature woman with a grown daughter and a career. Applicant has worked for a federal contractor for over 20 years. Similarly, she has held a security clearance for over two decades. Despite her familiarity with security clearances and the clearance process, Applicant failed to present any special facts or circumstances that might explain how these seven obligations became delinquent between 2000 and 2006. Indeed, although based on her unsubstantiated assertions and scant argument,

¹⁵ See SOR allegation 1.a.

¹⁶ See SOR allegation 1.g.

¹⁷ This is particularly true since Applicant failed to identify exactly which of the cited obligations were to be satisfied with those sums.

it appears that only the debt subject to a garnishment has been actually addressed. While Applicant expresses plans to address some of her other debts in the future, she has failed to tangibly document any past or present efforts which might mitigate the serious security concerns posed by the financial considerations guideline. Consequently, Applicant failed to demonstrate that it is clearly consistent with the national interest to grant her a security clearance. Because any doubts must be resolved in favor of the national security, I find all the allegations set forth in the SOR in the Government's favor. Clearance is denied.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	Against the Applicant
Subparagraph 1.c:	Against the Applicant
Subparagraph 1.d:	Against the Applicant
Subparagraph 1.e:	Against the Applicant
Subparagraph 1.f:	Against the Applicant
Subparagraph 1.g:	Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr.
Administrative Judge